

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21071 of 2021

Shailendra Kumar Ojha S/o Late Yogendra Ojha, resident of 403, Gauri Shankar Apt. Phase-1, North of Loyola High School, Kurji, P.S. Patliputra, District-Patna-800010.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Agriculture Department, Bihar, Patna.
2. The Principal Secretary, Agriculture Department, Bihar, Patna.
3. The Director, Agriculture Department, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ravi Kumar, Adv.
For the Respondent/s : Mr.Raghwanand, GA-11
Mr.Sanjay Kr. Tiwari, AC to GA-11

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 19-04-2024

1. The present writ petition has been filed for quashing the resolution contained in Memo No.359 dated 22.10.2021, by which the Disciplinary Authority has initiated a departmental proceeding purportedly under Rule 43(b) of the Bihar Pension Rules, 1950 (hereinafter referred to as the 'Rules, 1950').

2. The brief facts of the case, according to the petitioner are that the petitioner was appointed in the Department of Agriculture, Government of Bihar, Patna on 28.01.1988, whereafter he was transferred as District Agriculture Officer, Saran at Chapra on 29.06.2002. It is the case of the petitioner that two errant sub-ordinate officers used to harass the petitioner



and they were not co-operating with the petitioner in discharge of the official work, leading to the petitioner having informed the police about the misdeeds of the said two sub-ordinate officers, however, no action was taken and instead a false trap case was lodged and the petitioner was made an accused in Vigilance P.S. Case No.18 of 2003, whereafter he was taken into custody and enlarged on bail on 08.01.2004. The petitioner was suspended vide order dated 21.02.2004 and subsequently, the suspension was revoked, vide order dated 04.3.2004. Finally, on 22.03.2005, inquiry was instituted against the aforesaid two errant sub-ordinate officers, however, in the meantime, charge-sheet was submitted in the aforesaid Vigilance P.S. Case No.18 of 2003, but the same is still pending consideration by the learned Trial Court.

3. At this juncture, it has been submitted by the learned counsel for the petitioner that though a show-cause notice was issued just prior to the retirement of the petitioner on 31.12.2019, vide letter dated 08.01.2019 and charges were framed under *Prapatra (Ka)* as also the petitioner was called upon to submit his written/defence statement but the respondents had initiated a departmental proceeding, for the first time, under the provisions contained in Rule 43(b) of the Rules,



1950, only vide Memo dated 22.10.2021, i.e. after retirement of the petitioner and that too for an allegation pertaining to the year, 2003.

4. The learned counsel for the petitioner has referred to Rule 43(b) of the Rules, 1950, to submit that the proviso thereof, contemplates that in case any departmental proceeding has not been instituted while the Government servant was on duty either before retirement or during re-employment, the same can be instituted after retirement only in respect of the event which took place not more than four years before the institution of such proceedings. The learned counsel for the petitioner has relied on a judgment rendered by the Hon'ble Apex Court in the case of *State of Bihar and Others Vs. Mohd. Idris Ansari*, reported in *1995 Supp (3) SCC 56*, to submit that the Hon'ble Apex Court has held that a departmental proceeding under Rule 43(b) of the Rules, 1950, can only be initiated after retirement, in connection with such misconduct which might have taken place within four years of the initiation of such departmental proceeding qua the delinquent, however, in the present case, the petitioner superannuated on 31.12.2019, but the departmental proceeding under Rule 43(b) of the Rules, 1950 was initiated only on 22.10.2021 and that too for an allegation pertaining to



the year 2003, i.e in connection with a misconduct which had taken place beyond 4 years of initiation of the said proceedings, hence such proceeding is not only barred by the proviso to Rule 43(b) of the Rules, 1950, but is also contrary to the law laid down by the Hon'ble Apex Court in the case of *Mohd. Idris Ansari* (supra).

5. Per contra the learned counsel for the respondent-State has submitted that a departmental proceeding had already been initiated prior to the retirement of the petitioner on 31.12.2019, by way of issuance of a show-cause notice dated 08.01.2019, pertaining to Vigilance P.S. Case No.18 of 2003, hence the subsequent departmental proceeding instituted under Rule 43(b) of the Rules, 1950, vide Memo dated 22.10.2021 is a continuation thereof, hence the bar as aforesaid, would not apply in the present case, thus, the present writ petition is fit to be dismissed.

6. I have heard the learned counsel for the parties and perused the materials available on record, from which it is clear that the misconduct for which the departmental proceeding in question has been instituted under Rule 43(b) of the Rules, 1950, is stated to have been committed in the year, 2003, nonetheless, a departmental proceeding has been instituted



against the petitioner vide Memo dated 22.10.2021, after superannuation of the petitioner on 31.12.2019 and that too in connection with a misconduct pertaining to the period which is beyond the limitation of four years. In this connection, it would be relevant to reproduce Rule 43(b) of the Rules, 1950, hereinbelow:-

“43(b) The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the petitioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement:

Provided that-

(a) such departmental proceedings, if not instituted while the government servant was on duty either before retirement or during re-employment:

(i) shall not be instituted save with the sanction of the State Government;

(ii) shall be in respect of an event which took



place not more than four years before the institution of such proceedings,

(iii) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made,

(b) judicial proceedings, if not instituted while the government servant was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a); and

(c) the Bihar Public Service Commission shall be consulted before final orders are passed."

7. This Court finds that the present case is squarely covered by the law laid down by the Hon'ble Apex Court in the case of **Mohd. Idris Ansari** (supra), paragraph no.10 whereof, is being reproduced hereinbelow:-

"10. So far as the second type of cases are concerned the proof of grave misconduct on the part of the government servant concerned during his service tenure will have to be culled out by the revisional authority from the departmental proceedings or judicial proceedings which might



have taken place during his service tenure or from departmental proceedings which may be initiated even after his retirement in such type of cases. But such departmental proceedings will have to comply with the requirements of Rule 43(b). Consequently a retired government servant can be found guilty of grave misconduct during his service career pursuant to the departmental proceedings conducted against him even after his retirement, but such proceedings could be initiated in connection with only such misconduct which might have taken place within 4 years of the initiation of such departmental proceedings against him. In the present case, the respondent retired on 31-1-1993 and the show-cause notice was issued on the ground of grave misconduct on 27-9-1993 and not on the ground that service record of the pensioner was not thoroughly satisfactory. It was issued by the State Government as sanctioning authority. It had, therefore, to be read with Rule 43 (b). Such notice therefore, could cover any misconduct if



committed within 4 years prior to 27-9-1993 meaning thereby it should have been committed during the period from 26-9-1989 up to 31-1-1993 when the respondent retired. Only in case of such a misconduct, departmental proceedings could have been initiated against the respondent under Rule 43(b). In such proceedings, if he was found guilty of misconduct he could have been properly proceeded against under Rule 139(a) and (b). On the facts of the present case it must be held, agreeing with the High Court that the notice dated 27-9-1993 invoking powers under Rule 139(a) and (b) was issued wholly on the ground of alleged past misconduct and was not based on the ground that service record of the respondent was not thoroughly satisfactory. So far as that ground was concerned, on a conjoint reading of Rule 43(b) and Rule 139(a) there is no escape from the conclusion that as the alleged misconduct was committed by the respondent prior to 4 years from the date on which the show-cause notice dated 27-9-1993 was issued, the appellant authority had



no power to invoke Rule 139(a) and (b) against the respondent on the ground of proved misconduct. Consequently, it had to be held that proceedings under Rule 139 were wholly incompetent. The High Court was equally justified in quashing the final order dated 13-12-1993 as there is no proof of such a misconduct. No question of remanding the proceedings under Rule 139(a) and (b) would survive as the alleged grave misconduct could not be established in any departmental proceedings after the expiry of four years from 1986-87, as such proceedings would be clearly barred by Rule 43(b) proviso (a)(ii). Consequently the show-cause notice dated 27-9-1993 will have to be treated as stillborn and ineffective from its inception. Such a notice cannot be resorted to for supporting any fresh proceedings by way of remand. For all these reasons no case is made for our interference in this appeal. In the result appeal fails and is dismissed. There is no order as to costs.”

8. As regards the contention of the respondent-State to the



effect that a show-cause notice and memo of charge had already been issued to the petitioner vide Memo dated 08.01.2019, prior to superannuation of the petitioner on 31.12.2019, this Court finds that the said Memo dated 08.01.2019, can by no stretch of imagination be stated to be initiation of a valid and a legal departmental proceeding qua the petitioner herein, apart from the fact that the respondents have not brought on record any order to show that if at all a departmental proceeding was initiated prior to the retirement of the petitioner, the same has been converted into one under Rule 43(b) of the Rules, 1950, after superannuation of the petitioner on 31.12.2019, hence considering the very purport of Memo dated 22.10.2021, by which a departmental proceeding has been initiated for the very first time qua the petitioner under Rule 43(b) of the Rules, 1950, after his superannuation, pertaining to a misconduct of the year, 2003, this Court is of the view that the same is barred by limitation, as per the provisions contained under Rule 43(b) of the Rules, 1950. Thus, evidently, the respondents could not have initiated any departmental proceeding against the petitioner under Rule 43(b) of the Rules, 1950, after his superannuation on 31.12.2019, in connection with a misconduct which has admittedly taken place beyond 4 years of initiation of such a



departmental proceeding qua the petitioner, thus, the impugned Memo dated 22.10.2021 is contrary to law, hence is fit to be set aside.

9. Having regard to the facts and circumstances of the case and for the foregoing reasons as also considering the fact that the present case is squarely covered by the judgment rendered by the Hon'ble Apex Court in the case of *Mohd. Idris Ansari* (supra), I deem it fit and proper to quash the Memo dated 22.10.2021, issued by the Deputy Secretary to the Government, Agriculture Department, Government of Bihar, Patna.

10. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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